UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, **11 Cr. 372 (RPP)**

- against -

GERALD ROLAND, **DECLARATION**

Defendant.

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CHRISTOPHER A. FLOOD, under penalty of perjury pursuant to U.S.C. § 1746 does hereby declare the following to be true.

1. I am an attorney admitted to practice law in the State of New York and before the bar of this Court. I am the Assistant Federal Defender appointed to represent Gerald Roland in the above-captioned indictment.

2. This declaration is made in support of Gerald Roland's motion to suppress evidence seized from the defendant's person on June 1, 2010 and from the defendant's bedroom on or about January 5, 2011. The defendant was initially seized in front of 204 West 114 Street in New York, New York. The defendant's home was located in unit 4B at 257 West 114 Street in New York, New York.

3. Upon information and belief, based upon interviews with witnesses, Mr. Roland, and my review of the discovery and certain documents attached hereto, I believe that Mr. Roland's Fourth and Fifth Amendment rights were violated when the police unlawfully seized him on June 1, 2010 and searched his home on January 5, 2011, each time eliciting a statement.

The June 1, 2010 Arrest

4. The first arrest was without a warrant and the police's conduct did not fall within any of the delineated exceptions to the warrant requirement. Similarly, there were no exigent

circumstances which justified the police's seizure of Mr. Roland.

5. The justification provided by the NYPD in their reports is conclusory, overly broad, and insufficiently specific to show to a standard of probable cause that Mr. Roland was dealing drugs on June 1, 2010. No specific information is provided in either the June 1, 2010 arrest report (Exhibit A), or the New York State complaint (Exhibit B) to adequately describe an alleged encounter between Mr. Roland and Mr. Wells, the alleged buyer, as a sale of narcotics. Nor do the officers describe the length of time they had the perpetrator under observation, or under what conditions.

6. The discovery reveals no Miranda waiver, and Mr. Roland does not recall being advised of his rights. Nevertheless, the police claim that Mr. Roland made a statement. (Exhibit A).

7. Mr. Roland was the subject of a show-up identification procedure performed by the NYPD.

8. At the time of his arrest, Mr. Roland was not in possession of any contraband.

9. At the time of his arrest, Mr. Ward was not in possession of contraband. Moreover, Mr. Ward waived his rights and was interrogated without counsel by a Manhattan Assistant District Attorney. During this interview, Mr. Ward credibly denied buying or using drugs, or knowing Gerald Roland. (Exhibit C and D).

The January 5, 2011 Arrest

10. NYPD officers searched 257 West 114th Street, Apartment 4B, in Manhattan, New York on January 5, 2011. At the time of this search, Gerald Roland was living with others on the premises. (Exhibit E).

11. The NYPD officers did not secure a warrant before conducting the search, nor does the

material provided in discovery reveal a valid justification for entering the home without a warrant.

12. The January 5, 2011 search allegedly produced a gun, bullets, cocaine, and an incriminating statement. The state prosecution of Mr. Roland has not gone forward, and the court file for that case has been sealed. Mr. Roland is not being prosecuted in federal court for any of the fruits of the January 5, 2011 search, although it appears that the government intends to introduce these fruits as "bad act" evidence under Fed. R. Evid. 404(b).

13. Based on all of the reasons set forth more fully in the Memorandum of Law, it is respectfully submitted that Mr. Roland's motion be granted in full.

Dated: June 20, 2011
New York, New York

CHRISTOPHER A. FLOOD